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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,502	03/10/2004	Avital Barak	Barak=5	6392

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BROWDY AND NEIMARK
624 NINTH STREET, N.W.
WASHINGTON, DC 20001

EXAMINER

LAVINDER, JACK W

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/798,502

Applicant(s)

BARAK, AVITAL

Examiner

Jack W. Lavinder

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-35, 38-40 is/are rejected.
- 7) ☒ Claim(s) 36,37 and 41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 25, 33-35, and 38-40 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Rice, 5845994 in view of Koven.

Regarding claim 25, Rice discloses a jewelry quality metal (any metal is considered to be a jewelry quality metal) mesh pouch with a drawstring (18) for closing the mouth of the pouch (col. 2, lines 29-32 and lines 45-60, col. 4, lines 32-43). The pouch is to be worn as a necklace to hold valuables safely and securely while at the beach, while also functioning as a decorative necklace. Rice discloses that the valuables could be money, such as quarters or dimes. The holes in the mesh would have to be smaller than a dime in order to prevent the dime from falling through the holes in the mesh. Therefore, the concept of the holes in the mesh being smaller than the objects being retained by the pouch is known and disclosed by Rice.

Rice fails to disclose jewels as part of the valuables to be placed in the pouch. Koven discloses a pendant (figures 4-7), which holds valuable jewels (4) having different shapes (different visual characteristics), for a necklace. The claim states that the device is a kit. Therefore, there are no requirements that the elements be connected to each other. The only requirement of the kit claim is that the elements be

present. In this case, all the elements of the kit are present in Rice in view of Koven. It would have been obvious to a person having ordinary skill in the art to place jewels of different visual characteristics into Rice's pouch in order to make the pendant necklace more appealing and decorative.

Regarding claims 33-34 and 38-39, Koven discloses the method of placing a gemstone within the pouch (page 1, lines 30-34). Rice and Koven both disclose securing the apparatus on an individual through the mesh carrying arrangement.

Regarding claims 35 and 40, the device can be used on the wrist or ankle of the wearer. Therefore, it is considered to be an anklet or bracelet.

3. Claims 26 and 29-32 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Rice in view of Koven, as applied previously, and further in view of Tully, 672499 and Irons, 726166.

Rice in view of Koven fails to disclose a ring on the bottom of the pouch. Tully discloses making a pouch (figure 2) with a ring (1) forming the bottom portion of the pouch. This bottom function equally as well as Rice's knotted bottom or bead crimp bottom in forming the bottom of the pouch to prevent the valuables from falling through the bottom of the pouch. Also, the specification fails to disclose any criticality with regard to the specific formation of the bottom of the pouch. Therefore, it would have been an obvious design choice to a person having ordinary skill in the art to use either type of bottom for forming the bottom of the pouch.

Rice in view of Koven also fails to disclose a plurality of chains interconnected with rings for forming the sides of the pouch. Rice discloses a woven type structure

including a series of knotted together strands forming the sidewalls of the pouch. This type of sidewall structure performs equally as well as the claimed sidewall structure in preventing the valuables from falling out of the pouch. Irons discloses the claimed sidewall structure (figures 1 and 2): a plurality of chains (C) interconnected together with a plurality of rings (B). Also, the specification fails to disclose any criticality with regard to the type of sidewall structure used to form the sidewalls of the pouch. Therefore, it would have been an obvious design choice to make Rice's sidewall structure from a plurality of interconnected chains.

Regarding claim 29, Rice discloses a necklace support band (26, figure 1).

Regarding claims 30 and 31, Rice's band can be placed around the wrist, ankle or over the ear.

Regarding claim 32, Rice discloses strands (24) extending below the bottom knot.

4. Claim 27 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Rice in view of Koven, Tully and Irons, as applied previously, and further in view of Corridon, 3483907.

Regarding claims 27, Rice discloses a plurality of slider rings, i.e., the topmost rings formed in the sidewall structure (38), but fails to disclose slider rings joining the terminal upper ends of the strands to the support band. Corridon discloses a plurality of slider rings (35) joining the terminal upper ends of the strands to the support band (36). The use of the slider rings allows the support band to more freely open and close the

opening of the pouch. Therefore, it would have been obvious to a person having ordinary skill in the art to use slider rings in Rice's pouch.

5. Claim 28 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Rice in view of Koven, Tully, Irons, and Corridon, as applied previously and further in view of Gilbertson, 1814378.

Regarding claim 28, Rice fails to disclose a safety clasp for engaging two of the slider rings for securing the top of the jewel pouch in a closed position. Gilbertson discloses the use of a safety pin (12) for closing the opening of a pouch. It would have been obvious to a person having ordinary skill in the art to use a safety pin to close Rice's pouch in order to add a secondary safety device to further prevent the dislodgement of the valuables from the pouch.

Allowable Subject Matter

6. Claims 36-37 and 41 has been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments filed 9/19/2006 have been fully considered but they are not persuasive.

The applicant argues, with regard to the rejection of claim 25, that Rice's disclosed invention is fundamentally different in that it does not relate to jewelry (page 8, paragraph 4). Jewelry is a very broad term and encompasses many different types of articles. In this case, the term is referring to a necklace, which is considered the piece

of jewelry. Rice discloses a band that can be attached around any body part in order to secure the pouch to the wearer. The band (26), as shown in figure 1, is placed around the neck of the wearer. This is a necklace and is considered to be jewelry. The use during sporting activities doesn't negate the fact that it is a necklace. Also, Rice discloses that their bag is ornamental (column 2, lines 55-57). This clearly indicates that the bag is an article of jewelry.

The applicant argues at the bottom of page 8 and the top of page 9 of their remarks that "it would have been inconceivable...to have replaced the sturdy draw-string 26,...with a relatively fragile jewelry necklace." This point is moot since the claim fails to require that the necklace be a fragile necklace. The claim states that the necklace be made from a "jewelry quality metal", which it is. Any metal can be construed to be a jewelry quality metal. For instance, a metal used to make nails or barbed wire is a jewelry quality metal, because nails and barbed wire are worn as jewelry. Also, titanium, gold, silver, copper, bronze, tin, sterling silver, aluminum, etc. are all well known metals used in making jewelry. The term "jewelry quality metal" is so broad that it encompasses most metals. Furthermore, it is well known that necklace jewelry chains come in a wide variety of sizes, i.e., 1/16 of an inch in cross sectional diameter to an inch in cross sectional diameter (hip hop and rock star artist have been known to wear necklace chains of this size).

The applicant argues at the bottom of page 9 of their remarks that "jewelry" has a meaning, e.g. "pieces of precious metals, crystal, etc., shaped and worn for adornment." Metal currency coins meet this definition. Rice discloses that coins can be placed in the

pouch and are therefore considered to be jewelry. Again, anything worn by the wearer can be perceived by an innocent bystander as a form of ornamentation or jewelry.

The applicant argues on page 10 of their remarks that kit claims are accepted in the United States. Agreed. The applicant continues and states that each jewel is intended for use separately. The key word here is "intended". As long as the structure of the prior art device is capable of performing the function, i.e., of separately receiving a jewel, then it meets the structural limitations of the claims. Clearly, Rice's device can perform this function. The applicant also argues that Rice and Koven fail to disclose the mesh closing when one of the jewels is placed in the bag. Again, this is a functional limitation that can be performed by Rice's bag. All the user has to do is place the jewel in the bag and grab a hold of the drawstring and slowly jerk the drawstring while the bag is hanging therefrom. This jerking motion along with gravity will close the opening of the mesh. Clearly, Rice's bag is capable of performing the claimed function and thus meets the structural limitations implied by the claimed functions.

The applicant argues, on page 11 of their remarks, that Irons and Tully are not analogous art. The applicant states "There is no reason in the world why the skilled artisan would go to a laundry bag in order to modify the Rice mesh bag..." The examiner disagrees. Clearly, Rice, Irons, and Tully are all directed to bags for retaining articles. Therefore, they are all within the same field of endeavor, i.e., reclosable bags and are all directed to the problem of forming a useable reclosable bag. Applicant's invention is to a reclosable mesh bag used for retaining a gemstone, which is in the same field of endeavor as the prior art. The use of the bag is different from the prior art,

but the bag itself is in the same field of endeavor. Therefore, one of ordinary skill in the art would look to the bag art in trying to form a reclosable bag for a gemstone. The applicant continues with the argument by stating that the "jewelry pouch must not only function to hold the jewel, but must also function as jewelry, i.e. for adornment.." Clearly, Rice's mesh bag also performs this function. The bag is worn around the neck of the wearer and appears as an ornament to an innocent bystander and thus is considered an article of jewelry. Also, Rice discloses that their bag is ornamental (column 2, lines 55-57).

The applicant states that the rejection of claim 31 was meant for claim 32. The record is clear that this was a typographical error. The applicant argues that Rice fails to disclose chain strands. The reference is very clear that the strands 24 form the chain strands forming the sidewalls of the mesh pouch.

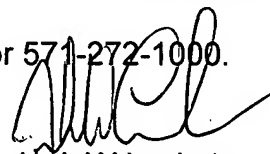
The applicant argues that the use of 5 and 6 references is proof that the examiner must be using hindsight to meet the limitations of applicant's claimed invention. The number of references is not proof of non-obviousness. The person skilled in the art looks and would look to as many references needed to solve the particular problem. In this case, the motivation to combine these references is implied by the references themselves, i.e., to provide a smooth, easily operable, reclosable bag for retaining valuable items.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jack W Lavinder
Primary Examiner
Art Unit 3677

11/29/2006